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U.S. Department of Justice

Immigration and Naturalization Service

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

FILE: [redacted] Office: Miami Date: SEP 25 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, the applicant expresses remorse for his past behavior and claims that he has completed all the requirements of the law. He states that he is married to a United States citizen and wants to reside permanently in the United States.

Section 212(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
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> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).
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> (C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or

colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On January 21, 1985, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 85-17A, the applicant was indicted for possession of controlled substance (cocaine). On March 26, 1985, the applicant was convicted of the crime, adjudication of guilt was withheld, and he was placed on probation for a period of 6 months.

2. On July 6, 1988, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 88-19605, the applicant was adjudged guilty of sale, purchase or delivery of controlled substance (cocaine). Imposition of sentence was withheld and he was placed on probation for a period of 6 months. Because the applicant violated the terms of his probation, on December 20, 1988, the court revoked his probation and sentenced him to imprisonment for a term of 364 days.

3. On October 26, 1988, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 88-36982, the applicant was adjudged guilty of possession of controlled substance (cocaine). He was sentenced to imprisonment for a term of 364 days concurrent with sentence imposed in Case No. 88-19605 (paragraph 2 above).

4. On October 14, 1988, in Dade County, Florida, Case No. M88009842, the applicant was convicted of possession of drug paraphernalia. He was sentenced to credit for time served.

5. On May 16, 1990, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 90-2060, the applicant was adjudged guilty of shooting into or throwing deadly missile into occupied building or vehicle. Imposition of sentence was withheld and he was placed on probation for a period of 1 year with condition that he enter into and successfully complete domestic intervention program.

6. On September 26, 1991, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 91-29683, the applicant was adjudged guilty of aggravated battery. He was placed on probation for a term of 2 years and assessed a total of $225 in costs.

7. On June 6, 1995, in Dade County, Florida, Case No. F95017620, the applicant was arrested and charged with aggravated battery (domestic violence). On June 27, 1995, a "no information" was entered on the case.

8. The Federal Bureau of Investigation (FBI) report reflects that on June 21, 1995, in Dade County, Florida, Case No. 95-19294,

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the applicant was arrested and charged with vehicle-grand theft. While the court document relating to this charge is not contained in the record of proceeding, the FBI report reflects that on September 29, 1995, the applicant was convicted of the crime and sentenced to probation for a period of 2 years, to make restitution in the amount of $100, and assessed $255 in court costs.

9. On September 29, 1995, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 95-28136A, the applicant was adjudged guilty of Florida litter law. He was placed on probation for a period of 6 months, assessed $255 in court costs, and 75 hours community service. Because he violated the terms of his probation, on October 1, 1996, he was sentenced to imprisonment for a term of 366 days, credit for time served, followed by 18 months of probation (see paragraphs 10 and 11 below).

10. On February 20, 1996, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. F96-2010, the applicant was indicted for aggravated battery. On September 19, 1996, he was adjudged guilty of the crime and sentenced to imprisonment for a term of 366 days followed by 18 months of probation, concurrent with sentence imposed in Case Numbers 95-36882 (paragraph 11 below), 95-28136A (paragraph 9 above), and 95-19294 (paragraph 8 above).

11. On September 19, 1996, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 95-36882, the applicant was adjudged guilty of aggravated battery/bodily harm. He was sentenced to imprisonment for a term of 366 days, concurrent with sentence imposed in Case Numbers 95-19294 (paragraph 8 above), 95-28136A (paragraph 9 above), and 96-2010 (paragraph 10 above).

Aggravated assault or battery is a crime involving moral turpitude (paragraphs 5, 6, 10, and 11 above). Matter of P-, 7 I&N Dec. 376 (BIA 1956); Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967); Matter of Baker, 15 I&N Dec. 50 (BIA 1974). Likewise, grand theft is a crime involving moral turpitude (paragraph 8 above). Matter of Chen, 10 I&N Dec. 671 (BIA 1964); Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974). The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of cocaine and possession of drug paraphernalia (paragraphs 1, 3, and 4 above). Additionally, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act based on his conviction of sale, purchase or delivery (trafficking) of cocaine (paragraph 2 above). There is no waiver available to an alien found inadmissible under these sections except for a single offense of simple possession of thirty grams or

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less of marijuana. The applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

**ORDER:** The district director's decision is affirmed.